THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 362 OF 2005

31st March, 2006

Between:

1.Sri Abburi Srimannarayana Rao (died) per L.R.
2. Smt. Nibhuanupudi Sarojini.

..Petitioners

A N D

1. The Municipal Corporation of Guntur
rep. by Commissioner, Guntur and another …Respondents

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O R D E R :

1. This writ petition has been filed by Abburi Srimannarayana Rao assailing the action of the respondents in not receiving the Building Application submitted by him on 5-11-2004.

2. The Writ Petitioner purchased 875 square yards comprising Survey No. 673, situated at old Ward NO.16, New Ward NO.22, Block No.11, situated at Guntur from K. Sampath Kumar under a registered sale deed dated 4-7-1957. In the year 2002 he started construction of a small house and thereupon the Town Planning Staff of Municipal Corporation of Guntur demolished the brick walls on the ground that site has been reserved for public purpose as per the lay out plan of Sampath Nagar. The petitioner requested the authorities of the Municipal Corporation of Guntur to provide him a lay out plan, but the authorities refused to comply his requests. On 27-9-2004 he paid Rs.3,230/- towards processing fee of his building application through challan No. 19585, dated 1-11-2004. When he produced all the documents along with the building permission application, the office of the Municipal Corporatin, Guntur-1st respondent refused to receive the same. Hence, the writ petition seeking a direction to the respondents to receive building application of the petitioner.

3. The sole petitioner Abburi Srimannarayana Rao died during pendency of this writ petition. His daughter Smt. Nibhanupudi Sarojini came on record as 2nd petitioner as per order in WPMP No. 23079 of 2005.

4. The 1st respondent filed counter affidavit. It is stated in the counter affidavit that as per the approved lay out Plan No. 48/58 the site in question is earmarked as Reserved Open Space. The entire plan came to be revised in L.P.No.18/60. It is further stated that the deceased petitioner except paying the process fee of Rs. 3,230/- by way of challan did not submit any plan for scrutiny and therefore, the application submitted by him came to be returned. I deem it appropriate to refer paras 4 to 6 of the counter affidavit and it is thus:

> "In reply to the avermssents made in para 5, the respondent corporation submit that the petitioner paid Rs. 3,230/- in Challan No. 19585, Dt. 01-11-2004 except paying the said fee the petitioner did not submit any plans for scrutiny. When plan was not submitted the petitioner would not get any kind of intimation. It is very clear that the petitioner knowing fully well that his plan will not approve as his site fall in reserve open space paid the said amount under a challan with mala fide intention to create an impression as if the respondent intentionally refused to receive the application. It is further to state that the petitioner submitted his application in the month of June and same was returned as it I not in conformity with the building regulations and the site is not belongs to the petitioner.
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> In reply to the averments made in Para 6 and 7 it is to state that the council had passed a resolution in C.R.NO. 148 requesting the second respondent to deserve the open space. In subsequent resolution in C.R.NO.404 had requested to cancel the earlier resolution. It is also fact that some of the residents filed O.S.No. 155/69 on the file of District Munsiff, Guntur regarding the resolution in C.R.No.148 as illegal. But, the learned District Munsiff dismissed above suit on the ground that the petitioners are not local residents. Therefore, it is clear that the first respondent was in possession and enjoyment of the open space of Ac. 1-50

cents without any interruption.

In reply to the Para 8, it is submitted that the petitioner had applied the building application to first respondent after filing this Writ Petition and the same was returned by the Corporation within 16 days as per the guidelines in G.O.Ms.No.423 M.A. Dt. 31-7-1998 for the reason that he site under reference falls in Reserve Open Space in L.P.No.18/60. All these allegations might have been invented by the petitioner for the purpose of this Writ Petition to satisfy the Hon'ble Court in getting anticipatory orders which cannot be considered while deciding the matter".

5. Second petitioner filed reply affidavit. It is stated in the reply affidavit that as on the date of purchase of the land by the 1st petitioner, A.P. (Andhra Area) Municipalities Act, 1920 was in force and there was no provision in the said Act for earmarking certain areas as reserved open spaces. It is further stated in the reply affidavit that the G.Os. mentioned in the counter affidavit are pertaining to the years 1998 and 2002 and whereas the deceased 1st petitioner purchased the land in the year 1957 and by then the provisions of AP. (Andhra Area) District Municipalities Act, 1920 were in force.

6. Heard Smt. A.Chaya Devi, learned counsel appearing for the petitioners and Sri B.Venkata Ratnam learned Standing Counsel appearing for the Municipal Corporation of Guntur-1st respondent.

7. Learned counsel appearing for the petitioners submit that the deceased 1st petitioner purchased the house site admeasuring 875 square yards on 4-7-1957 and by then the provisions of Andhra Pradesh (Andhra Area) District Municipalities Act, 1920 were in force where under there is no provision for reserving certain areas for public purpose. She would further submit that the deceased 1st petitioner paid necessary fee for processing his application and therefore, the action of the respondents in not considering his building permission

application is wholly unjustified. She would also contend that the layout plan for T.S.No.670, 673 and part of 661 was approved in 1961 with certain conditions and the deceased 1st petitioner purchased the property much prior to the lay out plan being approved. Yet another contention has been raised that when the Council passed resolution on 5-6-1968, some of the residents of the locality filed O.S.No.155 of 1969 on the file of the District Munsiff, Guntur and the said suit ended in dismissal, upholding the Council resolution dated 5-6-1968.

8. Learned Standing Counsel appearing for the 1st respondent-Municipal Corporation submits that the site purchased by the 1st petitioner was earmarked for community purpose in the lay out plan bearing No. 48/58 and revised in L.P.No.18/60 and therefore, the 1st respondent- Municipal Corporation is justified in rejecting the building permission application. He further submits that once certain area is reserved for open spaces for parks and play grounds, it cannot be re-reserved for construction purpose. In support of his submissions reliance has been placed on the decision of ***Bangalore Medical Trust Vs. B.S.Muddappa***[1] wherein the Supreme Court while construing the Town Planning Act opined that reservation of open spaces for parks and play grounds is universally recognized as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanization stating:

> "The statutes in force in India and abroad reserving open spaces for parks and playgrounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanization. Crowded urban areas tend to spread disease, crime and immorality……"

9. The objection of the respondents seems to be that the site claimed by the petitioners is earmarked as reserved open spaces as

per lay Out No. 18/60. The 1st petitioner purchased house site admeasuring 875 square yards on 4-7-1957, by then the provisions of Andhra Pradesh (Andhra Area) District Municipalities Act, 1920 were in force, where under there is no provision of reserving certain areas for public purpose. The lay out plan came to be approved initially in 1961, as noticed in the judgment dated 3-10-1972 passed in O.S.No. 155 of 1969 on the file of the District Munsiff, Guntur. The Municipal Corporation is a party to the said suit, had filed a written statement stating that the lay out for T.S.No.660, 673and part of 661 was approved in 1961 with certain conditions that the reserved site therein has to be handed over to the Municipality by executing a proper registered gift deed by Komanduri Sampath Kumar.

10. It appears the 1st respondent-Municipal Corporation passed resolution on 5-6-1968 to delete the reservation made in the layout to save all further litigation. The said resolution came to be questioned by some of the residents of the locality and said suit ended in dismissal upholding the reservation. The judgment passed in O.S.No.155 of 1969 has been placed before me along with the material papers. When such is the situation, the contention of the 1st respondent-Municipal Corporation that the application filed by the petitioner for building permission cannot be considered on the ground that the area is earmarked for common amenities. The only reasonable conclusion is that the objections raised by the respondents that the site in question is earmarked, as reserved open place is unsustainable.

11. In the circumstances, I deem it appropriate to dispose of the writ petition giving liberty to the 2nd petitioner to submit a fresh application seeking permission to put up constructions on the site in question in accordance with the compliance of the provisions of law in force and by paying necessary fee and thereupon, the respondents have to consider her application as expeditiously as possible and pass

appropriate orders.

12. The writ petition is accordingly disposed of. No order as to costs.

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Justice B.Seshasayana Reddy

31st March, 2006.
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[1] (1991)4 SCC 54